IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5069 OF 2005

Smt.Deepa Hinduja .. Petitioner
Versus
Mrs.Devaki Mirajkar .. Respondent

Mr.N.V.Walawalkar, Senior Advocate with
G.H.Keluskar for petitioner
Mr.P.G.Pravin for respondent.

CORAM : S.C.DHARMADHIKARI, J
DATE : 22nd August 2005.

P.C.

. This petition under Article 227 of the Constitution of India challenges the order dated 28th June 2005 passed by Additional Commissioner, Konkan Division, Mumbai dated 28th June 2005 allowing an Revision application preferred by the Respondent against the order of competent authority in case No.29 of 2002.

2. Suit premises viz., Flat No.14, second floor, Jagdev Flat Owners Coop.Housing Society situate at Chembur Mumbai was given on leave and licence by respondent original applicant to petitioner herein.

3. On expiry of leave and licence agreement, respondent licensor instituted proceedings under section 24 of Maharashtra Rent Control Act, 1999 (for short Rent Act) which confers power upon the competent authority to take cognisance of an application made by landlord/ licensor for eviction of a licensee consequent upon expiry of licence period.

4. Competent authority dismissed the application which order has been set aside by revisional authority and the application for eviction preferred by respondent consequently stands allowed.

5. Mr.Walawalkar, learned Counsel appearing for petitioner submits that the revisional authority has exceeded its jurisdiction conferred by law. He submits that as a revisional authority it was not open to the Additional Commissioner to re-appreciate findings of fact recorded by competent authority. He submits that competent authority has clearly held that there were not four leave and licence agreements from May 1995 but two more dated 1st April 2000 and 1st March 2001. He submits that execution of these further agreements is admitted inasmuch as witness to this agreement was summoned and he was examined. Nothing has been elicited from his cross examination by respondent. Mr.Walawalkar submits that once further agreements are admitted then, relying upon section 55 of the new Rent Act, the version of petitioner licensee in respect of the same has to be accepted. This, because, the further agreements have not been registered. In the absence of registration of

the same, protection that is given to licensee by subsection 2 of section 55 cannot be taken away. That being the position, the Revisional authority has erred in reversing the order of competent authority by interfering with a finding of fact and further denying petitioner statutory protection as envisaged above. He submits that the reasons assigned for interference by revisional authority are perverse. He submits that once execution of these documents is not disputed even by respondent, then, it was not open for Revisional Authority to hold that they have not been so executed.

6. Mr.Walawalkar submits that proceedings have been prosecuted by power of attorney holder of the landlady licensor and it was not open for such power of attorney holder to depose on behalf of landlady/licensor. In any event, in the light of the decision of the Supreme Court in the case of Janki Vashdeo Bhojwani and Anr. Vs. Indusind

Bank Ltd. and Ors., reported in (2005) 2 S.C.C. 217 the power of attorney holder could have deposed about the acts performed by him on behalf of his principal and not insofar as the acts performed by principal himself.

7. In support of his submission that Revisional Authority has exceeded its authority and fell into patent error in re-appreciating materials placed on record, Mr.Walawalkar relies upon another decision of the Supreme Court in the case of Chandrika Prasad Vs. Umesh Kumar Verma and Ors., reported in (2002) 1 S.C.C. 531.

8. On the other hand Mr.Pravin, learned Counsel appearing for respondent invites my attention to the documents placed on record and more particularly all the leave and licence agreements. In his submission, section 55 cannot be read in the manner suggested by Mr.Walawalkar and even in that provision, the legislature has

put some safeguards. That apart, assuming that all agreements are executed, learned Counsel submits that all agreements are leave and licence agreements. There is a specific clause which prohibits claiming any tenancy rights in respect of suit premises. Once the agreements are taken on record, then they have to be read in the light of the recitals therein. The recitals make it abundantly clear that there is no question of conferring tenancy rights with respect to suit premises. For all these reasons, he submits that the Revisional Authority was in no error in interfering with the order of the competent authority.

9. With the assistance of learned Counsel appearing for both sides, I have perused the impugned orders. I have also perused the petition and other annexures thereto. It is not disputed that jurisdiction of the authority was invoked to evict petitioner from suit premises as

a licensee. Section 24 of the Rent Act in sub-section 1 provids for making an application to competent authority by the landlord for eviction of a licensee upon expiry of licence period. Sub-section 2 of section 24 states that any licensee who does not deliver possession on expiry of licence period and continues to be in possession of licensed premises till he is dispossessed by the competent authority, then, he shall be liable to pay damages at double the rate of licence fee or charge fixed under the agreement of licence. Sub-section 3 clearly states that competent authority shall not entertain any claim of whatever nature from any other person who is not licensee, according to licence agreement. The explanation to this provision in sub-clause (b) incorporates the Rule of conclusive evidence. It states that agreement of licence in writing shall be conclusive evidence of the fact stated therein.

10. Section 55 of the Rent Act provides that tenancy agreement be compulsorily registered. It states that notwithstanding anything contained in the Rent Act or any other law, both, the agreement for leave and licence or letting of any premises, shall be in writing and shall be registered under the Registration Act, 1908. Sub-section 2 of Section 55 reads thus:-

> "55(2): The responsibility of getting such agreement registered shall be on the landlord and in the absence of the written registered agreement, the contention of the tenant about the terms and conditions subject to which premises have been given to him by the landlord on leave and licence or have been let to him, shall prevail, unless proved otherwise".

11. A bare perusal of this provision makes it abundantly clear that responsibility of Registration is of the landlord and in the absence of written registered agreement, the contention of tenant about the terms and conditions subject to which the premises have been given by the landlord on leave and licence or have been let out shall prevail, unless proved otherwise. Firstly, the contention of tenant with regard to terms and conditions subject to which premises have been given to him by the landlord would prevail unless proved otherwise. Similarly, assuming that the provisions apply to the terms and conditions of agreement for leave and licence, even then, the contention of licencee can prevail unless proved otherwise. In other words, it means, if proof otherwise is tendered then, the contention would not prevail.

12. In my view, in the facts and circumstances of the present case, assuming that

all further agreements have been executed, terms and conditions thereof do not provide for conferring rights of tenancy. A reference can usefully be made in this behalf to an agreement for leave and licence dated 1st March 2000 and clause 8 therein. Even the first agreement of 1995 and all further agreements contain identical stipulations. In the teeth of these clauses, it was not open for petitioner to contend that her rights are any higher than those conferred by this agreement. Conclusive evidence rule prescribed by explanation (b) to section 24, is thus not diluted at all. In the light of the clauses in the agreements and further they being styled as leave and licence agreements, there is no question of petitioner becoming a tenant. This, even if further agreements are taken into consideration, the status of petitioner, has not undergone any change.

13. The competent authority, therefore, ought

not to have held, merely because further agreements are brought on record, that a case of Tenancy is made out. This finding is arrived at by referring to Section 55(2) of the Rent Control Act. Further agreements have to be read in the light of the documents which are already placed on record as also in the backdrop of the correspondence between Advocates for parties. Advocates, while corresponding refer to the arrangement as leave and licence agreement and even offer to hand over possession upon payment of amount due and payable thereunder. Therefore, the competent authority was in clear error in rejecting the application of respondent.

14. The reasoning of competent authority that two agreements have not been brought on record and contents thereof being proved, section 55(2) would operate is ex facie perverse, to say the least. This finding could not have been recorded in the light of the clauses contained in the

agreements. It is this apparent error committed by competent authority, which is corrected by Revisional authority. The very purpose of revisional jurisdiction would have been defeated if the Additional Commissioner had not stepped in. Section 44 of the Rent Act confers revisional jurisdiction on the State Government or an officer not below the rank of Additional Commissioner Revenue Division and he is empowered to call for the papers and proceedings to satisfy himself that an order made by competent authority is in accordance with law. In my view, the order of competent authority was clearly not in accordance with law. Law does not empower drawing of an inference of tenancy merely because further agreements are proved. Further agreements being leave and licence agreements, it is not as if the competent authority could not have passed an order of eviction on the application preferred by respondent. The revisional jurisdiction having been exercised to

correct this obvious error and to set aside a perverse order, does not warrant my interference under Article 227 of the Constitution of India.

15. Judgements relied upon by Mr.Walawalkar would not carry the case of petitioner any further. This is not a case where revisional authority has re-appreciated findings of fact and has taken a different view of the matter. On the other hand, the exercise of revisional jurisdiction was necessitated because the competent authority did not act in accordance with law. Revisional jurisdiction has been exercised correctly in my view. In the decision relied upon by Mr.Walawalkar, the Supreme Court has held that it is permissible for revisional authority to make a limited re-appraisal for the purpose of satisfying itself about the order of lower authority and whether the same is in accordance with law and to find out whether no reasonable person acting with objectivity would

have reached the conclusion reached by lower authority. This test being applied, the Revisional Authority was justified in interfering with the order of Competent Authority.

16. The decision about the authority of a power of attorney holder to depose is not applicable to the present case at all. Assuming that further agreements are proved, yet, they being leave and licence agreements, it is not open for petitioner to canvass a proposition that in the absence of respondent landlady's deposition, they could be construed as agreements of tenancy. Even if the landlady was absent, the documents speak for themselves.

17. In the result, petition fails and is summarily dismissed. At the request of Mr.Walawalkar, ad-interim stay granted by this Court on 3rd August 2005 to continue for a period of eight weeks.

18. With consent of parties, order of revisional authority is corrected and liability to pay licence fee at double the rate in terms of sub-section 2 of section 24 shall be from April 2001. In my view, the legislative mandate cannot be defeated by this Court exercising its supervisory jurisdiction and accepting the plea of reduction of monetary liability. Hence, request of petitioner in that behalf is rejected.

(S.C.DHARMADHIKARI, J)